<u>Remarks</u>:

Claims 26-33 are pending. Applicant has amended the claims to distinctively claim the subject matter of the invention. By virtue of this amendment, claims 26 and 31-33 are amended. No new matter is added as support for the amendments is found within the Specification and the drawings. It is submitted that the application, as amended, is in condition for allowance. Accordingly, reconsideration and reexamination are respectfully requested.

§103 Rejection(s):

Claims 26-33 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2002/0159406 to Fukuda (hereafter "Fukuda") in view of U.S. Patent Publication No. 2004/0185777 to Bryson (hereafter "Bryson"). This rejection is respectfully traversed. Applicant also requests that the Examiner consider claim 31 separately from claim 26 as claims 31 recites subject matter not recited in claim 26.

> MPEP §2143 provides:
>
> > "To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations."

Fukuda is directed to a communication apparatus and method for connecting a host device in a radio communication network to the Internet, a public communication network, or a mobile network via the radio communication network. See paragraphs [0026] and [0042]; figure 4.

Fukuda fails to teach or suggest all the elements recited in each of claims 26 and 31, as amended. With respect to claim 26, on page 4 of the Office Action, the Examiner admits that Fukuda fails to teach or suggest "discontinuing the first connection after the first terminal, in response to determining that the data has been received by the first terminal; and discontinuing the second connection, in response to determining that no terminals connected to the mobile

device require access to the network, wherein the above steps are performed by a routing software executing on the mobile device."

Fukuda also fails to teach or suggest "wherein the network comprises a virtual private network (VPN)," as recited in claim 26. In fact, Fukuda directly teaches away from connecting to a VPN. As mentioned above, Fukuda teaches connecting a host device in a radio communication network to a public communication network, while claim 26 recites a VPN, which is a private communication network. Accordingly, since Fukuda teaches away from claimed subject matter, Fukuda is an improper reference. For this reason alone, it is respectfully requested that the §103 rejection be withdrawn.

With respect to claim 31, Fukuda fails to teach or suggest "attaching to a network, in response to receiving a data request that requires access to the network from a first terminal attached to the mobile device; receiving a public IP address for the mobile device from the network; assigning a private IP address to the first terminal; wherein the first terminal detaches from mobile device, in response to receiving the requested data; and detaching from the network, in response to determining that no terminals attached to the mobile device require access to the network."

Bryson is directed to a portable wireless network gateway that aggregates bandwidth demand of different devices operating under different communication protocols. Network connectivity is provided by encapsulating data from the different devices to make the data appear to be native to a single network. See Abstract.

Bryson fails to cure the deficiencies of Fukuda with respect to each of claims 26 and 31. That is, Bryson fails to teach or suggest "wherein the network comprises a virtual private network (VPN)," and "receiving a public IP address for the mobile device from the network; assigning a private IP address to the first terminal," as recited in claims 26 and 31, respectively.

Accordingly, neither of the cited references, either alone or in combination, teach or suggest the claimed subject matter. While the suggestion to modify or combine references may

come from the knowledge and common sense of a person of ordinary skill in the art, the fact that such knowledge may have been within the province of the ordinary artisan does not in and of itself make it so, absent clear and convincing evidence of such knowledge. *C.R. Bard, Inc. v. M3 Systems, Inc.,* 157 F.3d 1340, 1352, 48 USPQ 2d 1225, 1232 (Fed. Cir. 1998).

Here, the modification or combination proposed by the Examiner is not based on any clear and convincing evidence of a reason, suggestion, or motivation in the prior art that would have led one of ordinary skill in the art to combine the references. Rather, the reason, suggestion and motivation for the combination of references proposed by the Examiner simply is impermissible hindsight reconstruction given the benefit of Applicant's disclosure.

The Federal Circuit has consistently held that hindsight reconstruction does not constitute a prima facie case of obviousness under 35 U.S.C. §103. *In re Geiger*, 2 USPQ 2d 1276 (Fed Cir. 1987). Unfortunately, the Examiner rather than pointing to what the prior art discloses and teaches as to making the suggested modification relies on assumptions and statements without any support in the record. As such, the Examiner's statements regarding obviousness and motivation to modify are but shortcuts to a conclusion of obviousness devoid of the required analytical approach based on what is actually disclosed in the prior art.

Reliance on impermissible hindsight to avoid express limitations in the claims and setting forth unsupported hypothetical teachings to recreate the Applicant's claimed invention cannot establish a prima facie case of obviousness. Since obviousness may not be established by hindsight reconstruction, Applicant invites the Examiner to point out the alleged motivation to combine with specificity,[1] or alternatively provide a reference or affidavit in support thereof, pursuant to MPEP §2144.03.[2]

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1 *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984).

2 "The rationale supporting an obviousness rejection may be based on common knowledge in the art or "well-known" prior art . . . If the applicant traverses such an assertion the examiner should cite a reference in support of his or her position. When a rejection is based on facts within the personal knowledge of the examiner . . . the facts must be supported, when called for by the applicant, by an affidavit from the examiner."

Since no reasonable justification is provided in the Office Action as to how such modification or combination is possible and obviousness may not be established based on hindsight and conjecture, it is respectfully requested that the §103 rejection be withdrawn.

For the above reasons, it is respectfully submitted that claims 26 and 31 are in condition for allowance. Claims 27-30 and 32 depend on claim 26 and should be in condition for allowance by virtue of their dependence on an allowable base claim. Amended claim 33 substantially incorporates the elements of claim 31; therefore, claim 33 should also be in condition for allowance.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein; and no amendment made was for the purpose of narrowing the scope of any claim, unless Applicant has expressly argued herein that such amendment was made to distinguish over a particular reference or combination of references.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California, telephone number (888) 789 2266 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

/F. Jason Far-hadian/

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